



6712-01

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 73 and 74**

**[AU Docket No. 17-143; DA 17-533; DA 17-668]**

**Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26 – August 2, 2017; Freeze on FM Translator and Low-Power FM Station Minor Change Applications and FM Booster Applications July 19 – August 2, 2017; Availability of Online Tutorial; Clarification of Eligible Applicants**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In the document released June 6, 2017, the Media Bureau and the Wireless Telecommunications Bureau released instructions for filing applications in a filing window to be open from July 26, 2017, through August 2, 2017, in which certain AM station licensees and proposed assignees may seek new FM translator construction permits to retransmit the signals of the primary AM stations. In addition, the Media Bureau announced that it will not accept low-power FM and FM translator minor change construction permit applications and FM booster construction permit applications between July 19 and August 2, 2017. In the document released July 13, 2017, Commission staff announced that an online tutorial would be available for this auction, which is designated as Auction 99, and addressed a petition for clarification on an issue of applicant eligibility for this filing window opportunity.

**DATES:** From 12:01 a.m. Eastern Time (ET) on July 19, 2017, until midnight ET on August 2, 2017, there is a filing freeze for low-power FM and FM translator minor change construction permit applications and for FM booster construction permit applications. Starting at 12:01 a.m. ET on July 26, 2017, and prior to 6:00 p.m. on August 2, 2017, an eligible applicant may file its FCC Form 349. Starting at 9:00 a.m. ET on July 26, 2017, and prior to 6:00 p.m. ET on August 2, 2017, an eligible applicant may file its FCC Form 175.

**FOR FURTHER INFORMATION CONTACT:** About broadcast radio or FCC Form 349, James Bradshaw, Lisa Scanlan or Tom Nessinger in the Media Bureau's Audio Division at (202) 418-2700. About FCC Form 175 and competitive bidding rules, Lynne Milne in the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division at (202) 418-0660. About general auction procedures, the Auctions Hotline at (717) 338-2868.

**SUPPLEMENTARY INFORMATION:** This is a summary of a public notice released on June 6, 2017, supplemented by a related public notice released on July 13, 2017. The complete texts of these documents are available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12<sup>th</sup> St. SW, Room CY-A257, Washington, DC 20554. The complete texts also are available on the Commission's website at <http://wireless.fcc.gov>. Alternative formats are available for persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

1. The Media Bureau will institute a freeze on the acceptance of FM booster construction permit applications, as well as minor change construction permit applications for FM translators or Low Power FM stations on all channels (channels 201-300) starting at 12:01 am ET on July 19, 2017 until midnight ET on August 2, 2017. Any such applications filed during this freeze will be dismissed.

2. On June 6, 2017, the Media Bureau and the Wireless Telecommunications Bureau announced in a public notice (Filing Instructions Public Notice) details and filing instructions for certain AM broadcasters to apply for cross-service FM translator station construction permits in Auction 99. Eligibility for this filing opportunity is limited to any Class C or D AM station licensee or permittee, or the proposed assignee of such an AM station, wishing to file an application to establish a new cross-service FM translator to retransmit its AM station signal full time, provided that the AM primary station was not listed as the AM primary station in a FM translator modification application filed in either of the 2016 modification windows.

3. During this upcoming filing window, an applicant may propose only one cross-service FM translator for each Class C or D AM primary station to be rebroadcast. Any FM translator awarded through this filing window will only be authorized to rebroadcast the AM primary station identified in the applicant's FCC Form 349 Tech Box (or to originate nighttime programming during periods when a daytime-only AM primary station is not operating), on a permanent basis. The authorization for any FM translator station awarded through this filing window will be subject to a condition that it may not be assigned or transferred except in conjunction with the AM primary station that it rebroadcasts and with which it is commonly owned.

4. An eligible licensee or permittee, or proposed assignee if applicable, seeking a new cross-service FM translator for its AM station(s) must file electronically in the Media Bureau's Consolidated Database System (CDBS) prior to 6:00 p.m. ET on August 2, 2017, a separate FCC Form 349, Application for Authority to Construct or Make Changes in a FM Translator or FM Booster Station, for a construction permit for each such proposed FM translator. An applicant may designate in its FCC Form 349 Tech Box any non-reserved FM channel (Channels 221-300, 92.1 – 107.9 MHz) for its proposed cross-service translator. Only Section I, the Tech Box of Section III-A, and the Section VI Certification must be completed at this time. The applicant name entered in the FCC Form 349 must be identical with the name of the licensee or permittee on the AM primary station license or construction permit, unless it is the name of the assignee of a pending or granted assignment application for that eligible AM primary station.

5. Applicants must review carefully each Form 349 Tech Box submission for compliance with section 74.1201(g) and all other Commission technical rules relating to FM translator stations, as well as insuring that only one Form 349 is submitted for each qualified AM station. At the end of the initial filing window, if an applicant has filed more than one FM translator proposal (Form 349 Tech Box) designating the same AM primary station, only the first-filed FM translator engineering proposal (Form 349 Tech Box) will be considered. To avoid staff consideration of an unintended proposal, each applicant must carefully review its Forms 349 before submission, and delete each undesired engineering proposal

that specifies the identical AM primary station. Any request to delete an undesired proposal must be emailed before the initial filing window closes to James.Bradshaw@fcc.gov.

6. After the August 2, 2017, application deadline, an Auction 99 applicant may only file a technical amendment during the settlement period to be specified in a future public notice. No amendment, technical or otherwise, to a cross-service FM translator Form 349 filed during this filing window will be accepted between the close of the application filing window on August 2, 2017, and the release of the public notice listing mutually exclusive (MX) FM translator engineering proposals (if the engineering proposal is MX) or the release of the public notice listing the non-mutually exclusive FM translator engineering proposals (if the engineering proposal is not MX). Additional instructions about the filing of a Form 349 in the upcoming filing window are provided in Attachment A of the Filing Instructions Public Notice.

7. Each eligible AM station licensee or permittee applicant, or proposed assignee if applicable, for a new FM translator station must file electronically via the FCC Auction System one FCC Form 175, an Application to Participate in an Auction, in compliance with the Commission's rules and the instructions provided in the Filing Instructions Public Notice. A Form 175 must be submitted and confirmed prior to 6:00 p.m. ET on August 2, 2017. The applicant name entered in the FCC Form 175 must be identical with the name of the licensee or permittee on the AM primary station license or construction permit, unless the applicant name is identical with the name of a pending or granted assignment application assignee, if applicable.

8. An individual or entity may not submit more than one FCC Form 175 during this filing window, regardless of the number of Forms 349 it files. As explained in the Filing Instructions Public Notice, the Bureaus waived for Auction 99 the prohibition of section 1.2105(a)(3) on the filing of more than one FCC Form 175 by entities with any of the same controlling interests, but will continue to apply the prohibition against the filing of more than one FCC Form 175 by the same individual or entity.

9. An applicant's one Form 175 must cover all proposed FM translator stations for which that applicant files a FCC Form 349 Tech Box. It is the applicant's responsibility to ensure that the

CDBS-assigned file number(s) and facility identification (ID) number(s) from its Form(s) 349 are entered accurately in the View/Edit Engineering Proposals section of the applicant's Form 175. Any inaccuracy in data entry in the Form 175 of the CDBS-assigned file number(s) or facility ID number(s) could result in the Form 349 being excluded from auction processing. Also, any Form 349 submitted during the initial filing window that is not referenced on that applicant's Form 175 will be dismissed in CDBS.

10. Commission staff will not consider any proposal for which the required information is not on file by the close of the initial application filing window. No consideration will be given to the following: (a) any application for which both a FCC Form 175 and a complete FCC Form 349 proposal are not on file by the close of the initial application filing window; (b) any proposal filed by an applicant that is not a licensee or permittee, or proposed assignee if applicable, of a Class C or D AM broadcast station (including but not limited to any proposal filed by the licensee or permittee of a Class A or B AM broadcast station); (c) any proposal designating an AM primary station that was designated as the primary station on any application filed in either of the 2016 modifications windows; or (d) any proposal that specifies a channel in the reserved FM broadcast band (Channels 200-220, 88.1-91.9 MHz).

11. Each prospective Auction 99 applicant must review carefully the instructions provided about completing and submitting a FCC Form 175 in the Filing Instructions Public Notice, including guidance in Attachments A and B to that document. This Filing Instructions Public Notice provided specific information about reporting authorized bidders, the disclosure of agreements relating to construction permits subject to Auction 99, disclosure requirements for applicant owners and controlling interests, and provisions regarding a current and former default or delinquency. For example, Commission rules prohibit an individual from serving as an authorized bidder for more than one auction applicant.

12. Further, the interests of the applicant, and of any individual or entity with an attributable interest in the applicant, in other media of mass communications are considered as of the initial Form 175 filing deadline when determining an applicant's eligibility for a new entrant bidding credit. Events

occurring after this filing deadline, however, may cause diminishment or loss of bidding credit eligibility, and must be reported immediately.

13. The description in the Filing Instructions Public Notice of the noncommercial education (NCE) status election included a warning that if an FCC Form 175 identifies the application's proposed FM translator as noncommercial educational and that NCE engineering proposal is mutually exclusive with any engineering proposal for a commercial station, the NCE engineering proposal (Form 349) will be returned as unacceptable for filing. Each prospective applicant should consider carefully if it wishes to propose NCE operation for any FM translator acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline on August 2, 2017.

14. After the initial application filing deadline, an applicant will be permitted to make only minor modifications to its FCC Form 175 and major modifications are not permitted. For example, a claim of eligibility for a higher percentage of bidding credit will not be permitted after the initial application filing deadline. Further information is provided in the Filing Instructions Public Notice.

15. Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending FCC Form 175, including any change that may cause a loss of or reduction in the percentage of bidding credit requested previously. An auction applicant must file additional or corrected information within five days after a significant occurrence or amend its FCC Form 175 no later than five days after the applicant becomes aware of the need for amendment. An applicant's obligation to make modifications to a pending FCC Form 175 continues after these five days. An applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

16. Prospective applicants should study carefully the explanations in the Filing Instructions Public Notice concerning prohibited communication by an auction applicant contained in sections 1.2105(c) and 73.5002. For example, an applicant is defined in section 1.2105(c) for purposes of these prohibitions to include each officer and each director of the applicant, each controlling interest of the applicant, and each holder of an ownership interest in the applicant of 10 percent or more. The Filing

Instructions Public Notice provided further details concerning an impermissible communication, including a reminder of the duty to report immediately a communication that appears to violate section 1.2105(c). If mutual exclusivity (MX) is determined to exist for any engineering proposals submitted during this filing window, the Bureaus will announce a subsequent period during which this prohibition will be suspended for the purpose of resolving MX conflicts. Until such time, however, these prohibited communication rules remain in effect for Auction 99 from 6:00 p.m. on August 2, 2017, until the down payment deadline which will be announced in a future public notice.

17. If any FM translator engineering proposals filed during this announced window are determined to be MX and such MX is not resolved through a future opportunity for settlement or technical amendment, the Commission will resolve MX engineering proposals for commercial stations through competitive bidding.

FEDERAL COMMUNICATIONS COMMISSION.

**Sue McNeil,**

**Chief of Staff/Special Counsel, Wireless Telecommunications Bureau.**

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